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DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

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FILE: B-189751

DATE: December 21, 1977

MATTER OF: Swedlow, inc.

DIGEST:

1. Cancellation of small business set-aside where only one bid is received is proper when price bid is unreasonably high. Fact that bid reflects substantial tooling costs that would be incurred by bidder does not mean that Government would be obtaining items at reasonable price.
2. Government is under no obligation to make Government-owned tooling in possession of large business contractor available for use by small business bidders. If bid is based upon use of Government-owned equipment, competitive advantage to bidder is substantially eliminated by charging rent or using rental equivalent in evaluating bid.

Swedlow, Inc. protests the cancellation by the Air Force of invitation for bids (IFB) FO4606-77-B-0072, which contemplated award for 16 glass assemblies for the F-105 aircraft on the basis of a total small business set-aside.

The solicitation was furnished to 26 small business sources. However, only one bid, from Swedlow, was received. Because the price bid by Swedlow was considered unreasonable, the contracting officer decided to cancel the solicitation pursuant to Armed Services Procurement Regulation (ASPR) § 2-404.1(b)(vi) (1976 ed.), to withdraw the set-aside in accordance with ASPR § 1-706.3, and to readvertise the requirement on an unrestricted basis.

The determination that Swedlow's price was unreasonable was based on a comparison of the contracting officer's estimated price of \$1,815.09 per unit with Swedlow's bid of \$3,845.00 per unit. The contracting officer's

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estimate was computed on a base figure of \$1,598.80, representing the cost per unit for identical assemblies purchased in April 1976, increased by an inflation factor of 7.5 percent (representing the change in the Wholesale Price Index of safety glass between April 1976 and April 1977) and by a rental factor in the amount of \$97.24 (representing a rental charge, prorated among the 16 units, of Government-owned tooling equipment held by a large company under a No-Cost Storage Agreement that would be utilized as a price evaluation factor in an unrestricted competitive procurement).

Swedlow points out that a small business set-aside need not be cancelled when only one bid is received, and asserts that its price is reasonable when the cost of tooling is taken into account, and objects to the Government's failure to make the Government-owned tooling available to small business bidders.

Pursuant to ASPR § 1-706.5(a)(1), individual procurements are to be set aside for exclusive small business participation if there is a reasonable expectation that offers will be obtained from a sufficient number of small business concerns so that an award will be made at a reasonable price. Although in furtherance of the policy promoting small business participation, contracts may be awarded to small businesses at prices greater than those that would be attained in unrestricted procurements, see 53 Comp. Gen. 307 (1973); Tufco Industries, Inc., B-189323, July 13, 1977, 77-2 CPD 21, ASPR § 1-706.3(a) authorizes the cancellation of the set-aside if the premium the Government would pay under the set-aside would be so substantial as to be against public interest. B-164377, July 26, 1968.

Thus, as Swedlow states, it is not necessary to cancel a small business set-aside simply because only one small business submits a bid, provided, however, that the bid received is reasonable. See Wyle Laboratories, B-186526, September 7, 1976, 76-2 CPD 223; Tenco Construction Co., B-187137, December 21, 1976, 76-2 CPD 512. When the price or prices received are unreasonable, the small business set-aside may be withdrawn. See Scott Glass, Inc., B-185864, May 24, 1976, 76-1 CPD 339; B-169008, April 8, 1970; B-164377,

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supra; B-157418, November 10, 1965; B-151741, July 30, 1963; ASPR §1-706.3.

Whether a particular price is unreasonable is for determination by the contracting officer, ASPR § 1-706.3(a), who must analyze the facts and circumstances of each case. Our review is limited to the question of whether the contracting officer acted reasonably in making his determination. Berlitz School of Languages, B-184296, November 28, 1975, 75-2 CPD 350; J.H. Rutter Rex Manufacturing Co., Inc., 55 Comp. Gen. 902 (1976), 76-1 CPD 182.

Here, the contracting officer found the protester's unit price to be unreasonably high because it was \$2,029.91 higher than the estimated unit price. Although Swedlow states that its price is not unreasonably high in light of the tooling costs it will incur, the fact that Swedlow would have such tooling costs does not mean that the Government would be getting the glass assemblies from Swedlow at a reasonable price. B-164377, July 26, 1968. In the cited case, two firms submitted bids, the lowest of which was four times the average unit price of that item in prior unrestricted procurements. A contributing factor to the excessive price was the cost of tooling. It was held that even though the bidders' profit factors were reasonable, their cost of tooling and the small quantity of items to be purchased did not permit them to offer what the Government could consider to be a reasonable price. We find no basis for disagreeing with the contracting officer's determination in this case.

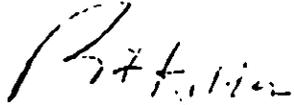
With regard to the tooling owned by the Government, it is reported that it is presently in the possession of PPG Industries, Inc., a former supplier of the glass assemblies, under a No-Cost Storage Agreement. Under the terms of the Agreement, the tooling cannot be offered for use by other firms in conjunction with competitive procurements of new spare requirements. It is also general Air Force policy not to make available Government-owned tooling for use by firms other than the contractor in possession of the tooling, although that contractor is expected to utilize the tooling if it is the successful bidder on procurements for spares or for repair work. Thus, the Air Force was under no obligation to, and in fact was precluded from, making the tooling available for use by small business bidders.

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The protester also states that if this procurement is opened to other than small business, and the large business now in possession of Government tooling is the successful bidder, it is doubtful that small businesses will be able to compete on future procurements of the same part. In this regard, it is pointed out that if a bid is based on utilization of Government-owned equipment, it is Government policy to eliminate the competitive advantage that might otherwise accrue to the bidder by charging rent for the equipment or by using a rental equivalent in evaluating bids. See ASPR § 13-501; 46 Comp. Gen. 578 (1966); B-160394, January 4, 1967.

The protest is denied.

Deputy


Comptroller General
of the United States



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

John S. ...
...

IN REPLY
REFER TO: B-189751

December 21, 1977

The Honorable S.I. Hayakawa
United States Senate

Dear Senator Hayakawa:

This is in regard to your expression of interest in the bid protest of Swedlow, Inc., concerning invitation for bid (IFB) No. F04606-77-B-0072, issued by the Sacramento Air Logistics Center, McClellan Air Force Base, California.

For the reasons discussed in the enclosed decision, the protest has been denied.

We regret that a disposition more favorable to your constituent was not possible.

Sincerely yours,

Deputy

John S. ...
Comptroller General
of the United States

Enclosure



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

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IN REPLY
REFER TO: B-189751

December 21, 1977

The Honorable Jerry M. Patterson
House of Representatives

Dear Mr. Patterson:

This is in regard to your expression of interest in the bid protest of Swedlow, Inc., concerning invitation for bid (IFB) No. FO 4606-77-B-0072, issued by the Sacramento Air Logistics Center, McClellan Air Force Base, California.

For the reasons discussed in the enclosed decision, the protest has been denied.

We regret that a disposition more favorable to your constituent was not possible.

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J. H. ...
Comptroller General
of the United States

Enclosure